

delegated this responsibility (if a law judge has not yet been assigned or if the assigned law judge is unavailable) may issue an appropriate order, including an order directing compliance with any ruling previously made with respect to discovery.

(c) *Use of the Federal Rules of Civil Procedure.* Those portions of the Federal Rules of Civil Procedure that pertain to depositions and discovery may be used as a general guide for discovery practice in proceedings before the Board, where appropriate. The Federal Rules and the case law that construes them shall be considered by the Board and its law judges as instructive, rather than controlling.

(d) *Failure to provide or preserve evidence.* The failure of any party to comply with a law judge's order compelling discovery, or to cooperate with a timely request for the preservation of evidence, may result in a negative inference against that party with respect to the matter sought and not provided or preserved, a preclusion order, dismissal or other relief deemed appropriate by the law judge.

§ 821.20 Subpoenas, witness fees, and appearances of Board Members, officers and employees.

(a) *Subpoenas.* Except as provided in paragraph (c) of this section, subpoenas requiring the attendance of witnesses, or the production of documentary or tangible evidence, for the purpose of taking depositions or at a hearing, may be issued by the presiding law judge (or the chief law judge, if the proceeding has not been assigned to a law judge) upon application by any party. The application shall show the general relevance and reasonable scope of the evidence sought. Any person upon whom a subpoena is served may, within 7 days after service of the subpoena, but in any event prior to the return date thereof, file with the law judge who issued the subpoena a motion to quash or modify the subpoena, and such filing shall stay the effectiveness of the subpoena pending final action by the law judge on the motion.

(b) *Witness fees.* Witnesses shall be entitled to the same fees and expenses for mileage as are paid to witnesses in the courts of the United States. The fees

and expenses shall be paid by the party at whose request the witness is subpoenaed or appears. The Board may decline to process a proceeding further should a party fail to compensate a witness pursuant to this paragraph.

(c) *Board Members, officers and employees.* In order to encourage a free flow of information to the Board's accident investigators, the Board disfavors the use of its personnel in enforcement proceedings. Therefore, the provisions of paragraph (a) of this section are not applicable to Board Members, officers and employees, or the production of documents in their custody. Applications for subpoenas requiring the attendance of such persons, or the production of such documents, must be addressed to the General Counsel, and shall set forth the need of the moving party for the testimony or documents sought, and a showing that such material is not now, and was not otherwise, reasonably available from other sources. Only upon the General Counsel's written approval for the issuance of a subpoena requiring a Board Member, officer or employee to provide testimony and/or to produce documents in connection with discovery or at a hearing may a law judge issue such a subpoena. The law judge shall not permit the testimony or documentary evidence provided by a Board Member, officer or employee to include any expression of opinion, or any account of statements of a party made during the Board's investigation of any accident.

§ 821.21 Official notice.

Where a law judge or the Board intends to take official notice of a material fact not appearing in the evidence in the record, notice shall be given to all parties, who may within 10 days file a petition disputing that fact.

Subpart C—Special Rules Applicable to Proceedings Under 49 U.S.C. 44703

§ 821.24 Initiation of proceeding.

(a) *Petition for review.* Where the Administrator has denied an application for the issuance or renewal of an airman certificate, the applicant may file with the Board a petition for review of

National Transportation Safety Board

§ 821.30

the Administrator's denial. The petition must be filed with the Board within 60 days after the date on which notice of the Administrator's denial was served on the petitioner.

(b) *Form and content of petition.* The petition may be in letter form. It shall identify the Administrator's certificate denial action, and contain a complete but concise statement of the reasons why the petitioner believes the certificate denial was erroneous.

(c) *Answer to petition.* The Administrator shall file an answer to the petition for review within 20 days after the date of service of the petition. The answer shall specifically address each of the reasons set forth in the petition as to why the petitioner believes the certificate denial was erroneous.

(d) *Stay of proceeding pending request for special issuance (restricted) medical certificate.* The Board lacks the authority to review requests for special issuance (restricted) medical certificates, or to direct that they be issued. Where a request for a special issuance certificate has been filed with the Administrator pursuant to the Federal Aviation Regulations, the Board will, upon the petitioner's written request, hold a petition for review of a denial of an unrestricted medical certificate in abeyance pending final action by the Administrator on the special issuance request, but for no longer than 180 days after the date on which the unrestricted medical certificate denial was issued.

(e) *New evidence.* Where review of a denial of an unrestricted medical certificate is at issue, if the petitioner has undergone medical testing or evaluation in addition to that already submitted or known to the Administrator, and wishes to introduce the results into the record, such new medical evidence must be served on the Administrator at least 30 days prior to the hearing. Absent good cause, failure to so timely serve the new medical evidence on the Administrator will result in the exclusion of such evidence from the record. The Administrator may amend his or her answer to respond to such new medical evidence within 10 days after the date on which he or she was served therewith.

§ 821.25 Burden of proof.

In proceedings under 49 U.S.C. 44703, the burden of proof shall be upon the petitioner.

§ 821.26 Motion to dismiss petition for review for lack of standing.

Upon motion by the Administrator within the time limit for filing an answer, a petition for review shall be dismissed for lack of standing in either of the following instances:

(a) If the petition seeks the issuance of the same type of certificate that was under an order of suspension on the date of the denial; or

(b) If the petition seeks the issuance of the same type of certificate that had been revoked within one year of the date of the denial, unless the order revoking such certificate provides otherwise.

Subpart D—Special Rules Applicable to Proceedings Under 49 U.S.C. 44709

§ 821.30 Initiation of proceeding.

(a) *Appeal.* Where the Administrator has issued an order amending, modifying, suspending or revoking a certificate, the affected certificate holder (respondent) may file with the Board an appeal from the Administrator's order. The respondent shall simultaneously serve a copy of the appeal on the Administrator. The appeal must be filed with the Board within 20 days after the date on which the Administrator's order was served on the respondent, except as provided with respect to emergency and other immediately effective orders under § 821.53(a).

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the certificate or certificates affected and the Administrator's action from which the appeal is sought.

(c) *Effect of filing timely appeal with the Board.* Timely filing with the Board of an appeal from an order of the Administrator shall postpone the effective date of the order until final disposition of the appeal by the law judge or the Board, except where the order appealed from is an emergency or other immediately effective order, in which case the effectiveness of the order will